

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 claim that -- I mean, I wasn't really 3 familiar with this claim at all. 4 Q. I understand. 5 Mr. Hannah handed me today a copy 6 of your 2006 financial statement and I would 7 like to ask you about. I see that Mr. Hannah 8 has a copy. I understand you might have a 9 copy? 10 A. I have one in my bag. Need to be 11 careful of that. 12 (Exhibit 1034, document, marked for 13 identification, as of this date.) 14 Q. I would like to mark that copy, but 15 that means that I have to keep it after the 16 deposition today; is that all right? 17 A. Yeah, no problem. 18 Q. So I'm going to put a sticker on it 19 so we can keep track of it. That's 20 Exhibit 1034. 21 Is Exhibit 1034 a copy of Finjan's 22 consolidated financial statements for the 23 year ending December 31, 2006? 24 A. Yes. 25 Q. Do you believe that Exhibit 1034 is</p>	<p>2 an accurate statement? 3 MR. HANNAH: Objection to form. 4 A. What do you define by "accurate"? 5 Q. You are not aware of any errors or 6 omissions? 7 MR. HANNAH: Objection to form. 8 A. Not that I'm aware of. 9 Q. You expect when the auditors audit 10 it they did their job? 11 MR. HANNAH: Objection to form. 12 A. Yes. 13 Q. There is the note on inventory on 14 this statement, it's on page eight. 15 Do you see that? 16 A. Oh, yeah. I tell you I remember 17 something. 18 Q. Is that note G the one you were 19 referring to, to explain the basis for the 20 inventory? 21 A. Yes. 22 Q. Do you know if the inventory in 23 2006 is reported at cost or whether it's 24 reported at market? 25 A. The number that you see in the 2006</p>
<p>2 report reflects the inventory value which is 3 derived from cost and market, so it's a 4 combination of both. 5 Q. Okay. Do you know if there is 6 somewhere backup or worksheet that reflects 7 how that inventory number was derived? 8 A. I know that there is some backup, I 9 don't know where it is. It's not something 10 that is -- it's not a backup that I saw. I 11 believe that there is something that backs up 12 the number. 13 MR. HOLDREITH: Mr. Hannah, because 14 we've had some trouble finding 15 accounting information in this case. 16 I'm going to ask you to ask Ernst & 17 Young and Finjan to preserve any work 18 papers, accounting work papers so that 19 if we want to look at the backup for 20 this stuff we have the best possible 21 chance of obtaining that information. 22 Q. Is it correct, Mr. Sofer, that as 23 of December 31, 2006 the company showed a net 24 loss of about \$12,898,000 for the year 2006? 25 MR. HANNAH: Objection to form.</p>	<p>2 A. You are referring to page four, 3 yes. 4 Q. Yes. I'm sorry, we spoke over each 5 other so I have to ask you again. 6 Is it correct that for the year 7 ended December 31, 2006 Finjan showed a net 8 loss of about \$12,898,000? 9 MR. HANNAH: Objection to form. 10 A. Yes. 11 Q. And again, in 2006 as in 2005, is 12 it correct that the selling and marketing was 13 the largest single expense for Finjan? 14 A. Yes. 15 Q. Do you know if the Malicious Code 16 Research Center costs are reflected on one of 17 these lines? 18 MR. HANNAH: Objection to form. 19 A. Again, when you are referring to 20 "Malicious Code Research Center" who are you 21 referring to? 22 Q. Are you familiar with a group 23 within Finjan called the Malicious Code 24 Research Center? 25 A. Yes.</p>

103

105

Pages 102 to 105

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 Q. Are the costs of that group 3 reported on one of these lines on the 2006 4 statement of operations?</p> <p>5 A. Yes.</p> <p>6 Q. Where are those costs?</p> <p>7 A. I'm not sure, it could be either by 8 on the research and development line or in 9 the selling and marketing line.</p> <p>10 Q. How would you go about finding out 11 where those Malicious Code Research Center 12 costs are?</p> <p>13 A. You are asking specifically what, 14 where are they contained and which line item?</p> <p>15 Q. Right.</p> <p>16 A. I would need to refer to the 17 accounting and ask for a breakdown and see 18 what are the details of the salary costs and 19 look at the employee names and see where -- 20 their position.</p> <p>21 Q. Okay. And that's information in 22 Finjan's accounting system that we've 23 discussed?</p> <p>24 A. You will need to -- it's accounting 25 and the HR as well, because every employee</p>	<p>2 should have a code and that derives which 3 line item in the accounting system it would 4 go, so could be either line.</p> <p>5 Q. At the very end of this 2006 report 6 there's -- on the last page there's a 7 paragraph for subsequent events. Could you 8 turn to that, please. It's page 22 of 9 Exhibit 1034.</p> <p>10 A. Um-hum.</p> <p>11 Q. Do you have page 22 in front of 12 you?</p> <p>13 A. Yes.</p> <p>14 Q. Page 22 refers to a lawsuit filed 15 June 5, 2006 by the company for patent 16 infringement, that's this suit, right?</p> <p>17 MR. HANNAH: Objection to form.</p> <p>18 A. Can you repeat the question?</p> <p>19 Q. Sure. Is the lawsuit that's 20 referred to on page 22 of the 2006 financial 21 report, is that this lawsuit that we're here 22 today to talk about?</p> <p>23 MR. HANNAH: Objection to form.</p> <p>24 A. Yes.</p> <p>25 Q. And again, note B states "the</p>
<p>106</p> <p>2 company does not believe that this claim has 3 any merit, referring to Secure Computing's 4 patent infringement claim."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 MR. HANNAH: Objection to form.</p> <p>8 Q. And so would you agree with me that 9 Finjan is saying there just because Finjan 10 got sued doesn't mean in Finjan's opinion 11 that the claim has any merit?</p> <p>12 MR. HANNAH: Objection to form.</p> <p>13 A. Again, you need to repeat your 14 question.</p> <p>15 Q. Sure. Isn't Finjan saying there 16 that even though we've been sued for patent 17 infringement that doesn't mean that the claim 18 has any merit?</p> <p>19 MR. HANNAH: Objection to form.</p> <p>20 A. I mean that's what the sentence 21 says.</p> <p>22 Q. The next line says "the company 23 also does not believe that this legal claim 24 will have any impact on its financial 25 statements."</p>	<p>107</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know what the basis for that 5 statement is?</p> <p>6 MR. HANNAH: Objection to form and 7 to the extent this calls for 8 attorney-client communication I'd 9 instruct you not to answer. If you can 10 answer otherwise, go ahead.</p> <p>11 A. So can you repeat the question?</p> <p>12 Q. Sure. Do you know what the basis 13 is for Finjan's belief that 14 Secure Computing's claim will not have any 15 impact on its financial statements?</p> <p>16 MR. HANNAH: Again I'll repeat my 17 objection to form and with my 18 instruction.</p> <p>19 A. Okay. So I specifically wasn't 20 aware of any discussions that were, but I 21 know that this statement is based on 22 discussions that were with employees of the 23 company.</p> <p>24 Q. With attorneys. Do you know if 25 Finjan believes that the lawsuit will have no</p>

108

109

Pages 106 to 109

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 impact because Finjan expects to win?</p> <p>3 MR. HANNAH: Objection to form.</p> <p>4 Q. Or do you know whether Finjan</p> <p>5 believes even if it loses the claim the claim</p> <p>6 will not have an impact on the financial</p> <p>7 statement?</p> <p>8 MR. HANNAH: Excuse me. Objection</p> <p>9 and I'll remind you of my instruction,</p> <p>10 answer otherwise.</p> <p>11 A. So I don't know on what was or on</p> <p>12 which one of your attributes was this</p> <p>13 sentence depending on.</p> <p>14 MR. HOLDREITH: Let's take our</p> <p>15 lunch break.</p> <p>16 MR. VIDEOGRAPHER: 11:51. Off the</p> <p>17 record. End of tape one.</p> <p>18 A F T E R N O O N S E S S I O N</p> <p>19 (Time noted: 1:14 p.m.)</p> <p>20 E Z R A S O F E R, resumed and testified as</p> <p>21 follows:</p> <p>22 EXAMINATION BY (Cont'd.)</p> <p>23 MR. HOLDREITH:</p> <p>24 (Exhibits 1035 through 1042,</p> <p>25 documents, marked for identification, as</p>	<p>2 of this date.)</p> <p>3 MR. VIDEOGRAPHER: It's 1:14 on the</p> <p>4 record. Beginning of tape two.</p> <p>5 Q. Mr. Sofer, while we were off the</p> <p>6 record I marked some consolidated financial</p> <p>7 statement copies and one other document. I'm</p> <p>8 going to go through them one by one just to</p> <p>9 verify that's what they are. First exhibit</p> <p>10 is 1035. It's the consolidated financial</p> <p>11 statements for Finjan Software, Inc. as of</p> <p>12 December 31, 2004.</p> <p>13 Is that a copy of an audited</p> <p>14 financial statement for Finjan on a</p> <p>15 consolidated basis?</p> <p>16 A. The best of my knowledge it is.</p> <p>17 Q. Exhibit 1036 is a Finjan Software,</p> <p>18 Inc. consolidated financial statement as of</p> <p>19 December 31, 2003.</p> <p>20 Is that a copy of an audited</p> <p>21 financial statement for Finjan on a</p> <p>22 consolidated basis?</p> <p>23 A. To the best of my knowledge it is.</p> <p>24 Q. Exhibit 1037 is a copy of a</p> <p>25 document entitled Finjan Software, Inc.</p>
<p>2 consolidated financial statements as of</p> <p>3 December 31, 2002.</p> <p>4 Is that a copy of an audited</p> <p>5 financial statement for Finjan on a</p> <p>6 consolidated basis?</p> <p>7 A. To the best of my knowledge it is.</p> <p>8 Q. My copy is missing pages three and</p> <p>9 four and yours is, as well I'm sure, it's an</p> <p>10 exact copy and although the Bates numbers are</p> <p>11 consecutive the pages seem to be missing.</p> <p>12 Before I just pointed that out did</p> <p>13 you know there were two pages missing from</p> <p>14 the 2002 statement?</p> <p>15 A. No.</p> <p>16 MR. HOLDREITH: Counsel, if that is</p> <p>17 a copying error I'd appreciate it if you</p> <p>18 could produce those two pages.</p> <p>19 MR. HANNAH: I will look into it.</p> <p>20 Q. Mr. Sofer, Exhibit 1038 is a copy a</p> <p>21 document with the title "Finjan Software</p> <p>22 Limited and its subsidiary consolidated</p> <p>23 financial statements as of December 31,</p> <p>24 2001."</p> <p>25 Is that a copy of an audited</p>	<p>2 financial statement for Finjan on a</p> <p>3 consolidated basis?</p> <p>4 A. To the best of my knowledge it is.</p> <p>5 Q. Mr. Sofer, Exhibit 1039 is a copy</p> <p>6 of a document entitled "Finjan Software</p> <p>7 Limited consolidated financial statements as</p> <p>8 of December 31, 2000."</p> <p>9 Is that a copy of an audited</p> <p>10 financial statement for Finjan on a</p> <p>11 consolidated basis?</p> <p>12 A. The best of my knowledge it is.</p> <p>13 Q. Mr. Sofer, Exhibit 1040 is a copy</p> <p>14 of a document entitled Finjan Software</p> <p>15 Limited and subsidiary consolidated financial</p> <p>16 statements as of December 31, 1999.</p> <p>17 Is that a copy of a consolidated</p> <p>18 financial statement for Finjan?</p> <p>19 A. To the best of my knowledge it is.</p> <p>20 Q. Last one. Exhibit 1041 is a copy</p> <p>21 of a document entitled "Finjan Software</p> <p>22 Limited financial statement as of</p> <p>23 December 31, 1998."</p> <p>24 Is that a copy of a consolidated</p> <p>25 financial statement for Finjan?</p>

111

113

Pages 110 to 113

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 A. To the best of my knowledge it is. 3 Q. And that one is audited, as well? 4 A. Yes. 5 Q. Now, I also gave you a copy of 6 Exhibit 1042. It's a two-page document 7 numbered FIN 9002 and 03. 8 Have you ever seen this before? 9 A. No. 10 Q. It says it's a Finjan Software, 11 Inc, consolidated management report unaudited 12 draft for discussion only." 13 Have you ever seen a report like 14 this? 15 A. Yes. 16 Q. What is the unaudited draft of a 17 consolidated management report? 18 A. This is a quarterly report that is 19 issued for management purposes. 20 Q. Who issues this report? 21 A. The finance department. 22 Q. Is there a person within the 23 finance department who circulates it? 24 A. Yes. 25 Q. Who is that?</p>	114	<p>2 A. The VP finance. 3 Q. That's Mr. Kraitsman? 4 A. Yes. 5 Q. There's a note here on the first 6 page, it says "note 1-D annual invoice to 7 sales." 8 Do you see that? 9 A. Yes. 10 Q. What does that refer to? 11 A. If you remember I explained to you 12 before that there is a difference between the 13 audited reports and the management reports in 14 terms of the GAAP revenues and for management 15 reports. What we are referring to is 16 actually the purchase orders that were 17 invoiced within a certain period, so that's 18 the numbers that are referred in this report. 19 Q. Do you know if that is only a 20 timing issue or does it result in differences 21 in amounts to if you adjust for the timing? 22 MR. HANNAH: Objection to form. 23 A. You are referring to which period? 24 Q. Well, here's what I'm wondering. 25 Let me ask some basic questions and then</p>	115
<p>2 we'll get to that. 3 A. Okay. 4 Q. Is this chart one where it is on 5 two pages, but it reads across if you line up 6 the two pages? 7 A. Yes. 8 Q. Feel free to pull the staple out, 9 if you like, if that makes it easier to 10 refer. 11 A. No, that's okay, I can see the 12 number. 13 Q. There's a title over the left most 14 column that says "sales by product." 15 Do you see that? 16 A. Yes. 17 Q. Does that indicate that each of the 18 line items below it is a line of sales broken 19 out by product? 20 MR. HANNAH: Objection to form. 21 A. Yes. 22 MR. HANNAH: Go ahead. 23 A. I see here "sales by product," I 24 don't know if these are all the products of 25 Finjan.</p>	116	<p>2 Q. Do you know if VSW/FSG stands for? 3 A. No. 4 Q. Do you know if that's probably 5 Vital Security for Web/SurfinGate? 6 MR. HANNAH: Objection to form. 7 A. If you say that these are -- I mean 8 the letters that you are saying are in line 9 with what's written here, as I would say the 10 abbreviation, but I'm not sure that that's 11 the case. 12 Q. Can you tell by looking at the 13 numbers and from your knowledge of what these 14 reports generally are, whether that is the 15 line that reports sales of the Vital Security 16 for web appliances and software? 17 A. I cannot relay to the numbers that 18 are per year to the time I was with Finjan, 19 all these numbers are prior to that from the 20 numbers I'm looking at the first half of 2006 21 it seems these are the numbers, but as you 22 see from the time I'm with Finjan there isn't 23 a breakdown to line of products, but rather 24 one line item. 25 Q. Okay. So when you get a report</p>	117

Pages 114 to 117

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 from Mr. Kraitsman are all of the sales 3 compressed into a single line?</p> <p>4 A. As you see here it is broken down. 5 If you look at 2006 so you would see it's 6 broken down to one item this is Finjan 7 license or, you know, the subscription base 8 revenues and then there is, I think it is the 9 maintenance, yeah the maintenance invoice. 10 Do you see?</p> <p>11 Q. Okay. So considering the first 12 half of 2006 that's the column that says 13 H1/2006; is that right?</p> <p>14 A. Um-hum.</p> <p>15 Q. Your answer is "yes"?</p> <p>16 A. Again, yeah. I was referring to 17 that, yes.</p> <p>18 Q. What happened, just so I 19 understand, what products are included in 20 that \$6,751,000?</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 A. When you say "what products," I 23 need you to elaborate on that.</p> <p>24 Q. Is the \$6,751,000 an aggregate of 25 all appliances and software that Finjan</p>	<p>2 invoiced in the first half of 2006?</p> <p>3 A. Yes.</p> <p>4 Q. As you sit here, do you know 5 whether the sales numbers for years, any of 6 the years shown on Exhibit 1042 are accurate?</p> <p>7 MR. HANNAH: Objection to form.</p> <p>8 A. Again, I need you to define what is 9 "accurate"?</p> <p>10 Q. Do you know if this Exhibit 1042 11 reflects the sales that are shown on the 12 books of Finjan by year for the invoiced 13 amounts?</p> <p>14 MR. HANNAH: Objection to form.</p> <p>15 A. So again books of Finjan" you need 16 to define what is that.</p> <p>17 Q. What I'm trying to get a sense of 18 is whether you have any knowledge of whether 19 the numbers on this page are correct?</p> <p>20 A. So I'm saying "correct" is a 21 relative word because the question is what 22 are you measuring, so...</p> <p>23 Q. Do you know the answer to that, 24 what they are measuring?</p> <p>25 A. So I need to know what are you</p>
<p>118</p> <p>2 referring to by "correct."</p> <p>3 Q. Do you know what any of the numbers 4 on Exhibit 1042 are measuring?</p> <p>5 MR. HANNAH: Objection to form.</p> <p>6 A. I think you asked that question, 7 but I'll say it again. What is measured here 8 is the invoice revenues that were issued in a 9 certain period and that's what is measured 10 here.</p> <p>11 Q. Okay. Do you know if Exhibit 1042 12 is a correct statement of the invoiced 13 amounts in each period shown on Exhibit 1042?</p> <p>14 A. No.</p> <p>15 MR. HANNAH: Objection to form.</p> <p>16 Q. As you sit here today can you tell 17 me for any year the amount of Finjan's sales 18 of appliances and software?</p> <p>19 MR. HANNAH: Objection to form.</p> <p>20 A. So I would ask you to repeat the 21 question.</p> <p>22 Q. Sure. Can you tell me the amount 23 of Finjan's sales of appliances and software 24 in any year since the company began?</p> <p>25 MR. HANNAH: Objection to form.</p>	<p>119</p> <p>2 A. The question is appliance and 3 software as one number?</p> <p>4 Q. Yes.</p> <p>5 A. And then the question would be what 6 "sales," what are you referring to as 7 "sales"?</p> <p>8 Q. What I'm asking, Mr. Sofer, is if 9 you are able to tell me on any basis what the 10 sales of Finjan's appliances and 11 subscriptions have been for any year 1997 12 through 2006?</p> <p>13 MR. HANNAH: Objection to form.</p> <p>14 A. Okay. So you are referring to 15 appliance and subscription?</p> <p>16 Q. Right.</p> <p>17 A. With one number?</p> <p>18 Q. Right.</p> <p>19 A. And you are referring to invoice 20 sales?</p> <p>21 Q. Sure.</p> <p>22 A. Please repeat the question.</p> <p>23 Q. Can you tell me what the invoice 24 sales of appliances and subscriptions 25 together has been for Finjan in the years</p>

120

121

Pages 118 to 121

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 1997 through 2006?</p> <p>3 MR. HANNAH: Objection to form.</p> <p>4 A. Are you referring to audited</p> <p>5 numbers or unaudited numbers?</p> <p>6 Q. I don't care. I am asking if you</p> <p>7 can give me any number?</p> <p>8 A. So I don't remember that on top of</p> <p>9 my head. If you want specific numbers you</p> <p>10 have that report here, which is an unaudited</p> <p>11 report but reflects the invoice sales that</p> <p>12 were during this period.</p> <p>13 Q. As you sit here today, is this</p> <p>14 Exhibit 1042 the best information you have of</p> <p>15 the amount of Finjan's sales in each year</p> <p>16 1997 through the first half of 2006?</p> <p>17 MR. HANNAH: Objection to form.</p> <p>18 A. You will need to define what are</p> <p>19 "sales" again.</p> <p>20 Q. Well, Mr. Sofer, did Mr. Hannah</p> <p>21 explain to you that you were designated by</p> <p>22 Finjan to come here and testify about the</p> <p>23 company's sales?</p> <p>24 MR. HANNAH: This is calling -- I</p> <p>25 instruct you not to answer</p>	<p>2 attorney-client communication. I object</p> <p>3 to the question, as well.</p> <p>4 MR. HOLDREITH: Well, it's the easy</p> <p>5 way or the hard way. Your guy wants to</p> <p>6 get out of here, so if you want to do it</p> <p>7 the hard way that is what we will do.</p> <p>8 (Exhibit 1043, document, marked for</p> <p>9 identification, as of this date.)</p> <p>10 Q. Mr. Sofer, Exhibit 1043 is a copy</p> <p>11 of Finjan's responses to a request that I</p> <p>12 made in writing for Finjan to appoint</p> <p>13 witnesses to testify about various topics.</p> <p>14 Finjan has asked you to testify about topic</p> <p>15 number ten, which you can see on page eleven</p> <p>16 of Exhibit 1043. Topic number ten says</p> <p>17 "past, current and projected sales revenues,</p> <p>18 gross profits and net profits generated from</p> <p>19 the Finjan security products from the date of</p> <p>20 first sale."</p> <p>21 Has any -- are you aware that</p> <p>22 you've been appointed to testify about that</p> <p>23 topic today?</p> <p>24 A. Can you repeat the question again?</p> <p>25 Q. Sure. Are you aware that you've</p>
<p>122</p> <p>2 been appointed to testify today about the</p> <p>3 past, current and projected sales, revenues,</p> <p>4 gross profits and net profits generated from</p> <p>5 the Finjan security products from the date of</p> <p>6 first sale?</p> <p>7 MR. HANNAH: I think we're getting</p> <p>8 into a tricky privileged question and I</p> <p>9 would like to take a break and I can</p> <p>10 communicate with my client and make sure</p> <p>11 that we can fully answer the question.</p> <p>12 MR. HOLDREITH: All right. I don't</p> <p>13 agree with you it's a tricky question,</p> <p>14 but I won't deny you your break.</p> <p>15 MR. VIDEOGRAPHER: It's 1:30. Off</p> <p>16 the record.</p> <p>17 (Off-the-record discussion held out</p> <p>18 of the room.)</p> <p>19 MR. VIDEOGRAPHER: It's 1:32. On</p> <p>20 the record.</p> <p>21 MR. HOLDREITH: Could you read back</p> <p>22 the last question, please.</p> <p>23 (Record read.)</p> <p>24 MR. HANNAH: Again, I would like to</p> <p>25 caution you that this is calling for a</p>	<p>123</p> <p>2 "yes" or "no" question and that -- a</p> <p>3 "yes" or "no" answer and that you do not</p> <p>4 disclose any communications that we had</p> <p>5 as those communications are privileged,</p> <p>6 but you can answer the question "yes" or</p> <p>7 "no."</p> <p>8 A. Yes, I am aware.</p> <p>9 Q. Okay. And did you prepare yourself</p> <p>10 today to be able to testify about past,</p> <p>11 current and projected sales, revenues, gross</p> <p>12 profits and net profits?</p> <p>13 MR. HANNAH: Again, I'd give you</p> <p>14 the same cautionary instruction.</p> <p>15 A. Yes.</p> <p>16 Q. Did you look at any documents?</p> <p>17 A. I looked at the audited financial</p> <p>18 reports of the company.</p> <p>19 Q. Those are the reports I've put in</p> <p>20 front of you?</p> <p>21 A. The reports that you put in front</p> <p>22 of me, except for Exhibit 1042.</p> <p>23 Q. Okay. Do those reports report what</p> <p>24 the past, current and projected sales,</p> <p>25 revenues, gross profits and net profits</p>

125

Pages 122 to 125

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 generated from the Finjan security products 3 are from the date of first sale?</p> <p>4 A. Again, you need to define what are 5 the "revenues." If you are referring to the 6 "revenues" as noted in the financial 7 statements they are. The reason I'm saying 8 that is because this is not a financial 9 statement, it's different set of numbers.</p> <p>10 Q. I understand. And I understand 11 that you make a distinction between revenues 12 based on invoice and revenues that are 13 prorated for financial purposes.</p> <p>14 A. Exactly.</p> <p>15 Q. I'll accept either number.</p> <p>16 Can you give me on either basis the 17 sales of Finjan's security products in the 18 years 1997 through 2006?</p> <p>19 A. Again, the numbers appearing on the 20 financial reports and if you want us to go 21 through it we can go through it, throughout 22 the numbers. So if you would refer to page, 23 I think that was four in Exhibit 1041, you 24 have the revenues for '97 and '98. 25 Would you like me to state them?</p>	126	<p>2 Q. Sure. Let me make sure I 3 understand your testimony. Go ahead.</p> <p>4 A. So --</p> <p>5 MR. HANNAH: Well is there a 6 pending question?</p> <p>7 MR. HOLDREITH: Yeah.</p> <p>8 A. The revenues appear --</p> <p>9 MR. HANNAH: Object to the form of 10 the question. Go ahead.</p> <p>11 A. So you have the revenues in each 12 one of the years and you see the number of 13 consolidated revenues that appear in 1997 was 14 247,000 and 1998 it was 739,000. So it goes 15 on.</p> <p>16 Q. So if I look at the line on the 17 consolidated financial statements which is 18 revenues for each of the financial 19 statements, Exhibits 1034 through 1041 that 20 will report to me Finjan's sales?</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 A. I need you to repeat the question.</p> <p>23 Q. Sure. I'm going to ask 24 specifically about the number you pointed out 25 on page four of Exhibit 1041.</p>	127
<p>2 Is that a statement of Finjan's 3 sales in 1997 and 1998?</p> <p>4 MR. HANNAH: Objection to form.</p> <p>5 A. So that would be the statement of 6 Finjan's recognized revenues in this time, so 7 the invoiced revenues could be a totally 8 different number depending on what was 9 recognized.</p> <p>10 Q. Do any of the documents we have in 11 front of us tell you what the invoice 12 revenues were in any year?</p> <p>13 A. Yes.</p> <p>14 Q. Which ones?</p> <p>15 A. The exhibit that you presented to 16 me, 1042.</p> <p>17 Q. All right. So if I want to know 18 the invoiced revenues in the years 1997 19 through the first half of 2006, I can look at 20 and rely on Exhibit 1042?</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 A. For invoiced revenues, yes. I 23 would caveat it's an unaudited number.</p> <p>24 Q. What is the consequence of that?</p> <p>25 A. That I would say the auditors of</p>	128	<p>2 the company did not review the accuracy of 3 the number.</p> <p>4 Q. Did the numbers -- how often does 5 it happen that the numbers change based on an 6 audit?</p> <p>7 A. There could be a situation where 8 for revenue recognition there would be a 9 different set of numbers. There could be 10 issues where we would issue an invoiced sale 11 and the auditors would say that there isn't 12 enough substantial event for that and kind 13 of, you know, extended payment terms that we 14 shouldn't have invoiced up front, etc., that 15 would change the number.</p> <p>16 Q. Okay. But for Exhibit 1042 these 17 are invoiced numbers rather than revenue 18 recognition, right?</p> <p>19 A. Yes.</p> <p>20 Q. So the audit considerations you 21 just mentioned should not change the invoice 22 numbers, should they?</p> <p>23 MR. HANNAH: Objection to form.</p> <p>24 A. Again, if you look at this report 25 as is, the numbers shouldn't have been</p>	129

Pages 126 to 129

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 changed. If you look in the perspective of 3 time it could be that these numbers would be 4 different.</p> <p>5 Q. You are referring to Exhibit 1042 6 in your answer just now?</p> <p>7 A. Yeah.</p> <p>8 Q. Is there any audited set of 9 invoiced sales that is similar to 10 Exhibit 1042, but that has been audited?</p> <p>11 MR. HANNAH: Objection to form.</p> <p>12 A. These are management reports that 13 are not audited at all.</p> <p>14 Q. Do the auditors audit invoice 15 revenue as opposed to recognized revenue?</p> <p>16 MR. HANNAH: Objection to form.</p> <p>17 A. Again, I mean, when you say did the 18 auditors audit invoiced revenues, "invoiced 19 revenues" is internal management term of the 20 company so...</p> <p>21 Q. Therefore, you don't ask your 22 auditors to audit the revenue invoice 23 annually; is that right?</p> <p>24 A. No, we don't.</p> <p>25 Q. So is it a fair statement that</p>	<p>2 Exhibit 1042 is the best information that 3 Finjan has as to the amount invoiced in each 4 year 1997 through the first half of 2006?</p> <p>5 MR. HANNAH: Objection to form.</p> <p>6 A. So I would like you to repeat the 7 question, please.</p> <p>8 Q. Sure. Is it correct that 9 Exhibit 1042 reports the best information 10 Finjan has as to the invoiced amounts for the 11 years 1997 through the first half of 2006?</p> <p>12 MR. HANNAH: Objection to form.</p> <p>13 A. Yes.</p> <p>14 Q. Do you know what the reference to 15 the '194 Patent family is on Exhibit 1042 16 next to the designation VSW/FSG?</p> <p>17 MR. HANNAH: Objection to form.</p> <p>18 A. No.</p> <p>19 Q. Have you ever heard anyone at 20 Finjan say that the Vital Security for Web 21 and SurfinGate appliances and software are 22 covered by the '194 Patent?</p> <p>23 MR. HANNAH: Objection to form.</p> <p>24 A. No.</p> <p>25 Q. Do you know if Finjan considers the</p>
<p>2 Vital Security appliances and software to be 3 covered by the '194 Patent?</p> <p>4 MR. HANNAH: Objection to form.</p> <p>5 A. I wasn't familiar with the term 6 "194 Patent family," so I don't know if it 7 was included or not.</p> <p>8 Q. Are you familiar with the Mirage 9 product? There's a reference in the fourth 10 line here to "Mirage" and in parenthesis it 11 says "Vital Security for documents"?</p> <p>12 A. No.</p> <p>13 Q. Have you heard of an appliance 14 called the Documents 1Box?</p> <p>15 A. No.</p> <p>16 (Exhibit 1045, document, marked for 17 identification, as of this date.)</p> <p>18 Q. Mr. Sofer, Exhibit 1045 is a copy 19 of a two-page document entitled 20 "Documents 1Box." It's numbered for 21 identification FIN 3541 and 3542.</p> <p>22 Have you ever seen this product?</p> <p>23 A. No.</p> <p>24 Q. Do you know what the sales of this 25 product have been in any year?</p>	<p>2 MR. HANNAH: Objection to form.</p> <p>3 A. Again, can you repeat the question.</p> <p>4 Q. Sure. Do you know what the sales 5 of the Documents 1Box have been in any year?</p> <p>6 MR. HANNAH: Objection to form.</p> <p>7 A. No.</p> <p>8 Q. Do you know if Finjan has records 9 of what its sales of the Documents 1Box have 10 been?</p> <p>11 MR. HANNAH: Objection to form.</p> <p>12 A. I'm trying to look if it's in the 13 report you just gave me. That's probably the 14 Mirage product that you were referring to, 15 but I don't know if that's the only line 16 item.</p> <p>17 Q. What makes you say that is probably 18 the Mirage line?</p> <p>19 MR. HANNAH: Objection to form.</p> <p>20 A. The inference. The fact that you 21 referred to it before.</p> <p>22 Q. I'm sorry?</p> <p>23 A. The fact that you referred to it 24 before.</p> <p>25 Q. Unfortunately I can't testify in</p>

131

132

133

Pages 130 to 133

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

2 this case so I need to -- I need to find out
3 from you if I can. I will point out to you
4 that on Exhibit 1045 the description of the
5 Documents 1Box there is an identification of
6 Vital Security for documents, it's in the
7 right column of the first page in bold.

8 Do you see that?

9 A. Yes.

10 Q. Does that help you to know whether
11 or not the line item for Mirage which says in
12 parenthesis "Vital Security for documents,"
13 on Exhibit 1042 reports sales of the
14 Documents 1Box?

15 A. Yes.

16 Q. Do you think it probably does
17 report sales of the Documents 1Box?

18 A. Yes.

19 Q. According to Exhibit 1042, have
20 Finjan's total sales of the Documents 1Box
21 life to date been about \$4,060,000?

22 MR. HANNAH: Objection to form.

23 A. So are you asking me if that's the
24 number?

25 Q. Yes.

134

2 A. So I would like you to repeat the
3 question.

4 Q. According to Exhibit 1042, have
5 Finjan's total sales of the Documents 1Box
6 life to date been about \$460,000?

7 MR. HANNAH: Objection to form.

8 A. According to the document 1042,
9 Finjan's invoiced sales year to date or year
10 to half one 2006 are \$460,000.

11 Q. Do you know if that's an accurate
12 number?

13 MR. HANNAH: Objection to form.

14 A. No.

15 Q. Do you know if that line that
16 \$460,000 includes the Documents 1Box
17 appliance and software subscriptions?

18 MR. HANNAH: Objection to form.

19 A. No.

20 Q. Do you know when the first sale of
21 any Finjan -- let me ask the broadest
22 possible question.

23 Do you know when the first sale of
24 any Finjan product was, first time Finjan
25 sold a product?

135

2 MR. HANNAH: Objection to form.

3 A. Finjan exists from 1996 as a
4 company. When was the exact time that
5 Finjan's product was sold I don't know.

6 Q. You don't know if there were sales
7 in '96, for example?

8 MR. HANNAH: Objection to form.

9 A. I can look in the audited reports.
10 I said that we might get this information
11 from the financial report, but since we have
12 the information from 1997, so I do not really
13 know if there were any sales within 1996, but
14 I could assume that they were, not
15 significant though.

16 Q. The date of the first sale is
17 important to me.

18 Do you know if there is any way to
19 determine the date on which Finjan first sold
20 the product?

21 MR. HANNAH: Objection to form.

22 A. I believe that there is a way we
23 can go to our archives and see that, but I
24 don't have it on top, on the top of my head.

25 (Exhibit 1044, document, marked for

136

2 identification, as of this date.)

3 Q. I'm going to hand you Exhibit 1044.
4 That is a copy of a letter from me to
5 Mr. Hannah and attachment is an e-mail from
6 me to Mr. Hannah.

7 Have you seen any part of
8 Exhibit 1044 before?

9 A. No. I didn't see that.

10 Q. As part of your preparation for
11 your deposition, did you do anything to
12 determine the amount of Finjan's sales by
13 product by month?

14 A. No.

15 Q. Mr. Sofer, do you, at Finjan,
16 allocate any of your costs by product?

17 A. As I said before, at Finjan we
18 don't issue reports by product line, perhaps
19 it was prior to my time, but we do not do
20 that, and we do not allocate the costs.

21 Q. Okay. What about for the
22 appliances, could you not allocate at least
23 the costs to a third-party for supplying the
24 appliance by product?

25 MR. HANNAH: Objection to form.

137

Pages 134 to 137

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

2 A. So again you asked a question where
3 you said if we could allocate or not.
4 **Q. Right.**
5 A. I believe the information is there,
6 but we don't issue the reports because of the
7 size of the company.
8 **Q. Okay. I understand.**
9 **Do you know if it is a different --**
10 **let me back up and ask a more fundamental**
11 **question.**
12 **Do you know who you buy the**
13 **hardware from for the appliances?**
14 A. Yes.
15 **Q. Who is that?**
16 A. We have two providers; one is a
17 Portwell, I don't remember exactly the name.
18 This is the provider of the Finjan boxes and
19 the second is IBM.
20 **Q. What does IBM provide?**
21 A. IBM provides the 8,000 appliance
22 which is the bigger box and the 5,000 is
23 provided by Portwell.
24 **Q. Do you know if the 1,000 and 3,000**
25 **boxes are the same box as the 5,000, or is it**

138

2 **a different box with a different price from**
3 **Portwell?**
4 **MR. HANNAH:** Objection to form.
5 A. I'm not familiar between the
6 differences of the boxes, so I don't know the
7 answer. I believe it has different prices,
8 of course.
9 **Q. Who pays the invoices to Portwell,**
10 **which Finjan company?**
11 **MR. HANNAH:** Objection to form.
12 A. Finjan Limited.
13 **MR. HANNAH:** Give me a second.
14 A. Sorry.
15 **Q. That's Finjan Limited of Israel**
16 **pays Portwell for the boxes?**
17 A. Yes.
18 **Q. Is IBM also paid by Finjan of**
19 **Israel?**
20 A. Yes.
21 **Q. Are there any intercompany**
22 **transfers between Finjan Limited and Finjan**
23 **U.S.A. when inventory is moved to San Jose?**
24 **MR. HANNAH:** Objection to form.
25 A. I believe there are charges, I'm

139

2 not familiar how it's calculated.
3 **Q. Do you know if Finjan Limited of**
4 **Israel recognizes any revenue above its cost**
5 **when it transfers a product to Finjan U.S.A.?**
6 **MR. HANNAH:** Objection to form.
7 A. So I would like you to repeat the
8 question.
9 **Q. When Finjan Limited of Israel**
10 **transfers product into the inventory of**
11 **Finjan U.S.A., does that happen?**
12 A. Yes.
13 **Q. Does Finjan Limited of Israel**
14 **recognize revenue above Finjan Israel's cost**
15 **in that intercompany transfer?**
16 **MR. HANNAH:** Objection to form.
17 A. I don't know. Sorry.
18 **MR. HANNAH:** It's okay.
19 **Q. Do you have a labor cost for taking**
20 **the box from your vendor, from IBM or**
21 **Portwell, and for installing software and**
22 **preparing it for a Finjan device?**
23 **MR. HANNAH:** Objection to form.
24 A. Are you referring to Finjan's labor
25 cost?

140

2 **Q. Right.**
3 A. Or vendor's labor cost?
4 **Q. Right. Let me be more precise**
5 **then.**
6 **So at Finjan you received a generic**
7 **box from a vendor; is that right?**
8 A. Yes.
9 **Q. At Finjan you then load that device**
10 **with software; is that right?**
11 A. Yes.
12 **Q. Do you have a labor cost for**
13 **loading the device with software?**
14 **MR. HANNAH:** Objection to form.
15 A. We have in the operations
16 department personnel that are responsible for
17 taking care of that. And those personnel are
18 being paid salaries by Finjan, so by
19 definition there is a labor cost there.
20 **Q. And which company recognizes that**
21 **labor cost?**
22 **MR. HANNAH:** Objection to form.
23 A. So now, you go into the transfer
24 pricing between Finjan Israel and Finjan U.S.
25 **Q. Okay.**

141

Pages 138 to 141

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

2 A. This was -- I mean, Finjan did a
3 study was prior to me being with Finjan on
4 transfer pricing. It was reviewed by the
5 auditors, I believe there is a whole theory
6 behind what is charged there, theory how
7 should the transfer price be.

8 **Q. In the first instance, disregarding**
9 **the transfer price, are the employees whose**
10 **salaries are paid for the work of loading the**
11 **box with software, are they paid by**
12 **Finjan Limited of Israel?**

13 MR. HANNAH: Objection to form.
14 A. The employees that are loading the
15 software to the Finjan box, yes.

16 **Q. Are there any support -- well, let**
17 **me back up.**

18 **Do you recognize any costs for**
19 **providing support to your customers?**

20 MR. HANNAH: Objection to form.
21 A. I would like you to rephrase the
22 question.

23 **Q. Okay. What part is unclear?**

24 A. You are asking are we charging our
25 customers for support?

2 **Q. Not whether you recognize revenue**
3 **but whether you recognize internally a cost**
4 **for providing support to your customers?**
5 **Does Finjan have to pay some employees to do**
6 **that, for example?**

7 A. Yes.

8 **Q. Are there support employees who are**
9 **paid by Finjan Limited of Israel?**

10 MR. HANNAH: Objection to form.

11 A. Yes.

12 **Q. Are there also support employees**
13 **who are paid by Finjan, Inc. of the**
14 **United States?**

15 A. Yes.

16 MR. HANNAH: Objection to form.
17 Give me a second, please.

18 (Off-the-record discussion held.)

19 **Q. How do you determine which support**
20 **employees are assigned to support a customer,**
21 **whether they are support employees from the**
22 **U.S. company or support employees from**
23 **Finjan Limited of Israel?**

24 MR. HANNAH: Objection to form.

25 A. I don't understand the question.

143

2 **Q. Okay. So if you have a given**
3 **customer --**

4 A. Yes.

5 **Q. -- how is it decided which support**
6 **employees will support that customer?**

7 MR. HANNAH: Objection to form.

8 A. Okay. So now you are going into an
9 operational question really, I could only
10 testify to the best of my knowledge, so I
11 apologize upfront.

12 The U.S. company has support people
13 and Israel has support people, usually the
14 first level of support is done with the
15 employees that are closer to the customer's
16 site, so that would be the U.S. employees.
17 And the second level of support where there
18 are issues that are more into complication or
19 issues that need reviewing of the code or any
20 changes that it goes back to the support
21 people in Israel.

22 MR. HOLDREITH: Let's take a
23 ten-minute break.

24 MR. VIDEOGRAPHER: It's 1:58. Off
25 the record.

142

2 (Recess taken.)

3 MR. VIDEOGRAPHER: 2:12. On the
4 record.

5 **Q. Mr. Sofer, do you know if -- I'll**
6 **ask a more fundamental question.**

7 **Mr. Sofer, do you know that Finjan**
8 **entered into agreements with Cisco and with**
9 **IBM in 1998?**

10 MR. HANNAH: Objection to form.

11 A. I know that Cisco investment --
12 invested in Finjan regarding agreements that
13 we have with Cisco and IBM. I am not
14 familiar with the details.

15 **Q. Do you know if Finjan recognized**
16 **any revenue from relationships with Cisco and**
17 **IBM in 1998?**

18 MR. HANNAH: Objection to form.

19 A. No.

20 MR. HOLDREITH: Counsel, I
21 understand that among the documents that
22 were produced to my office in
23 Minneapolis this morning are agreements
24 with Cisco and IBM. I don't have those
25 here, I'm trying to see if they can be

145

Pages 142 to 145

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 faxed to me. I don't know if I'm going 3 to get them or not. I wonder if you 4 have copies of those with you. 5 MR. HANNAH: I unfortunately don't 6 have them with me. 7 MR. HOLDREITH: I asked at lunch 8 that you inquire of getting copies of 9 budgets, were you able to do that? 10 MR. HANNAH: Unfortunately it was a 11 difficult task and we are not able to do 12 it at this time. 13 MR. HOLDREITH: I guess I'll put 14 you on notice, Counsel, it shouldn't be 15 a surprise that we are going to ask you 16 to reconvene the deposition at your 17 expense once you provide all these 18 documents. So if you can provide them 19 today, I'll ask about them today if I 20 can, if you can't I understand, but 21 we're going to ask you to make it good. 22 (Exhibit 1046, document, marked for 23 identification, as of this date.) 24 Q. Here is Exhibit 1046. Mr. Sofer, 25 this has been numbered for identification</p>	<p>146</p>	<p>2 FIN 12994 and 995. 3 Do you know what that document is? 4 A. No. 5 Q. Have you ever seen a document like 6 this before at Finjan? 7 A. No. 8 Q. Do you recognize any of the item 9 numbers listed in the second column of 10 Exhibit 1046? 11 A. No. 12 Q. Do you know if Exhibit 1046 is a 13 document that reports sales of the 14 Internet 1Box and related products by Finjan? 15 MR. HANNAH: Objection to form. 16 A. Can you repeat the question? 17 Q. Yeah. Do you know whether 18 Exhibit 1046 is a document that reports sales 19 of the Internet 1Box and related products by 20 Finjan? 21 MR. HANNAH: Objection to form. 22 A. I see here some lines mention 23 Internet 1Box, so I believe it does, but I 24 don't know what are the other line items, so 25 I couldn't say that's the only thing that is</p>
<p>2 in this report. 3 Q. Okay. I don't want to belabor this 4 because I realize you've told me you have not 5 seen this document. 6 Are you able to tell from your 7 knowledge of Finjan and its accounting 8 systems whether this is a report in U.S. 9 dollars? 10 A. It's not mentioned here but, you 11 know, it seems like U.S. dollars. I don't 12 know. 13 Q. Mr. Sofer, I realize I'm showing 14 you documents you may not have seen and may 15 not know anything about, this is my one 16 chance to ask about them of a witness who's 17 been designated to testify on this topic, so 18 I have to find out if you know about them. 19 (Exhibit 1047, document, marked for 20 identification, as of this date.) 21 Q. Exhibit 1047 is numbered FIN 12992. 22 Do you know what this document is? 23 A. You are asking if I saw it before? 24 Q. Do you know what it is? 25 A. No.</p>	<p>148</p>	<p>2 Q. Have you seen reports like this 3 before at Finjan? 4 A. No. 5 Q. Does Finjan use a document that's 6 called a "credit note"? 7 A. I don't understand your question. 8 Q. There's a reference in lines 28 9 through 40 on Exhibit 1047 to something 10 called a "credit note." 11 Is that a document that Finjan 12 uses? 13 A. I can see that there are invoices 14 and credit notes, I believe that the "credit 15 note" is really a credit for invoices that 16 were issued. But I don't understand the 17 question, does Finjan use a document that is 18 credit note? 19 Q. Right. What I'm trying to 20 understand is, is a credit note something 21 that Finjan issues in the ordinary course of 22 its business? 23 MR. HANNAH: Objection to form. 24 Q. Let me ask the really simple 25 question.</p>

147

149

Pages 146 to 149

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 Do you know what a "credit note" 3 is? 4 A. Yes. 5 Q. What's a "credit note"? 6 A. Once you invoice a customer, there 7 is a dispute or disagreement or the appliance 8 was returned or anything like that, so there 9 is a credit note that is issued. 10 Q. Okay. Is a credit note a document 11 that reflects cancelling an invoice or 12 returning money to a customer? 13 A. Yes. 14 (Exhibit 1048, document, marked for 15 identification, as of this date.) 16 Q. Mr. Sofer, Exhibit 1048 is a copy 17 of a document entitled "Finjan board meeting 18 Q-4, 1997." It's number for identification 19 FIN 1550 through 1565. 20 Have you ever seen this before? 21 A. No. 22 Q. Have you ever seen a presentation 23 like this that presents financial highlights 24 for the board? 25 MR. HANNAH: Objection to form.</p>	<p>2 A. I will need you to refine your 3 question. 4 Q. All right. I'll ask specific to 5 Finjan. 6 Have you ever seen Power Point 7 slides of financial highlights that are 8 presented to the board? 9 A. Yes. 10 Q. Does that happen on a quarterly 11 basis? 12 A. Yes. 13 Q. Who prepares the financial 14 highlights for the board? 15 A. The financial department. 16 Q. Are those distributed to the board 17 somewhat? 18 A. Yes. 19 Q. How are they distributed? 20 A. On a Power Point presentation. 21 Q. Are they transmitted electronically 22 to board members? 23 A. By e-mail. 24 Q. Do you also receive a copy of the 25 quarterly board meeting presentations by</p>
<p>150</p> <p>2 e-mail? 3 A. Yes. 4 Q. Do you have copies of those in your 5 e-mail now? 6 A. Again, you need to refine the 7 question because it's too broad. I don't 8 have copy of the board meeting of ten years 9 ago, of course. 10 Q. Of course. 11 A. I'm in the company from 12 January 2007 and the financial presentations 13 that were presented to the board from that 14 time forward are, of course, within my 15 e-mail. 16 Q. All right. Do you have, do you 17 have those on a laptop computer? 18 A. Yes. 19 Q. Do you have that with you here 20 today? 21 A. Yes. 22 Q. Okay. What is contained generally 23 in the Power Point presentations to the board 24 in the financial highlights? 25 A. What we contain --</p>	<p>151</p> <p>2 MR. HANNAH: Objection to form. 3 You can go ahead. 4 A. When we have the quarterly board 5 meeting we presented to the board the 6 financial status of the company as of the 7 quarter, end of the quarter that was previous 8 to this board meeting. So if you look, if 9 there is a board meeting end of July, we 10 would present the quarterly financial 11 highlights for end of Q 22007. 12 Now, the financial highlights 13 contain the financial information of the 14 company. 15 Q. Is that a standard format for each 16 meeting? 17 MR. HANNAH: Objection to form. 18 A. When you say "standard format," 19 what are you referring to? 20 Q. Do you just update the numbers but 21 present the same categories of data in the 22 same form? 23 A. Usually we have a standard form, it 24 changes from quarter to quarter, but not 25 significantly.</p>

152

153

Pages 150 to 153

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 Q. Okay. What financial figures are 3 reported in the highlights to the board?</p> <p>4 MR. HANNAH: Objection to form.</p> <p>5 A. The financial figures that are 6 reported to the board are profit and loss, P 7 and L, which are the GAAP reports and the 8 actual budget reports.</p> <p>9 Q. Do the actual budget include a 10 comparison of the budget for revenue?</p> <p>11 A. Yes.</p> <p>12 Q. Does it include a comparison of the 13 budget for costs?</p> <p>14 A. Yes.</p> <p>15 Q. Does it include a comparison of the 16 budget for some measure of profit?</p> <p>17 A. I mean, that's the derivative of 18 the revenues minus the costs.</p> <p>19 Q. Is that stated explicitly in the 20 report?</p> <p>21 A. Yes.</p> <p>22 Q. Does it include any other 23 comparisons to budget?</p> <p>24 A. It has --</p> <p>25 MR. HANNAH: Objection to form.</p>	<p>2 A. -- yeah, it has a compare on to 3 budget of the items you said on a quarterly 4 basis and year to date.</p> <p>5 Q. And do you believe that Finjan has 6 maintained an archive of copies of these 7 presentations to the board prior to the date 8 you started?</p> <p>9 MR. HANNAH: Objection to form.</p> <p>10 A. When you say "Finjan," you mean the 11 company?</p> <p>12 Q. Right.</p> <p>13 A. I cannot comment on that because 14 you are referring to information that is ten 15 years ago and for the quarterly reports from 16 the time I'm with Finjan I have it on my 17 laptop, two board meeting, Q-1 and Q-2.</p> <p>18 Q. Was the presentation to board 19 members an existing procedure before you 20 joined Finjan or at the time you joined 21 Finjan?</p> <p>22 MR. HANNAH: Objection to form.</p> <p>23 A. A quarterly board meeting was 24 there, what was presented there I don't know.</p> <p>25 Q. Are there other things that are</p>
<p>2 presented at the quarterly board meetings 3 other than the financial highlights?</p> <p>4 A. Yes.</p> <p>5 Q. What are they?</p> <p>6 A. I don't remember from top of my 7 head all the subjects, but their overview of 8 the company, there is a quadrant where we did 9 a SWOT analysis, strength, weaknesses, 10 opportunities, threats, and there are updates 11 of the CEO. Product road map.</p> <p>12 MR. HOLDREITH: Counsel, I think 13 there are a lot of documents, a lot of 14 information that has not been produced 15 to us that's relevant to the 16 depositions, responsive to our requests. 17 Certainly these board presentations, 18 current and archived, the budgets, the 19 cost data, sales data, information in 20 the accounting system detail, the 21 agreements that were just produced this 22 morning at my office in Minneapolis.</p> <p>23 We're going to need to see that, 24 have time to prepare and take a 25 deposition on it and we're going to look</p>	<p>2 to you to pay the cost of that 3 deposition because we should have had 4 that data before now for this 5 deposition.</p> <p>6 If you want to try to mitigate that 7 by going down to the business center 8 right now and print me out as much of 9 that as you can I'm willing to try to 10 look at it, examine on it today to the 11 extent it's available, without 12 prejudicing any rights if we need any 13 more time to prepare. So I'm going to 14 ask you to consider what you want to do 15 here, but I believe none of that has 16 been produced to us and it's certainly 17 responsive.</p> <p>18 So if you want to take a minute to 19 consider what you want to do, I'm happy 20 to take a break for a little while, let 21 you print out as much of that data as 22 you can for me, cover as much as you 23 can. If you don't want to do that, you 24 know, we can discuss later what we think 25 our positions are, but I'm going to want</p>

155

157

Pages 154 to 157

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 you to tell me on the record what you 3 want to do. 4 MR. HANNAH: Okay. 5 MR. HOLDREITH: Do you want to take 6 a break to consider that? 7 MR. HANNAH: Of course. But we're 8 not conceding all of this and believe 9 that our production that we've collected 10 so far has been adequate, but we will 11 look into this, and I'd like to take a 12 break right now. 13 MR. VIDEOGRAPHER: 2:28. Off the 14 record. 15 (Recess taken.) 16 MR. VIDEOGRAPHER: 2:42. On the 17 record. 18 MR. HANNAH: So, Counsel, we've had 19 a chance to confer and we're going to 20 look into the documents and get those to 21 you, work with you and get those to you 22 produced as soon as possible. We'd like 23 to note that we do have several 24 depositions upcoming, particularly in 25 Israel, and we believe that we will have</p>	<p>2 people that will be able to testify 3 about those documents. 4 MR. HOLDREITH: Okay. 5 MR. HANNAH: And I would also like 6 to note that to the extent that we need 7 to designate another witness for 8 particular topics, that we can also look 9 into doing that, as well. 10 MR. HOLDREITH: We will certainly 11 work with you if we can solve our need 12 for information without disruption 13 that's all to the good, so I appreciate 14 that. 15 MR. HANNAH: Great. 16 Q. And we can get you to pole vaulting 17 today, and I'm sincere about that by the way, 18 I'm not messing with you. 19 Is the name Bill Lyons familiar to 20 you, Mr. Sofer, L-Y-O-N-S? 21 A. No. 22 Q. I'm sorry if you already answered 23 that question. 24 Did you participate in the 25 budgeting process this year?</p>
<p>158</p> <p>2 A. No. What I would say just to make 3 sure that I am understood, the budget was 4 prepared for 2007 was prepared before I came 5 on board. The budget has updates that 6 obviously I was part of so I don't want to be 7 misunderstood here. 8 Q. Let me ask you this question. 9 To the extent you have had any 10 involvement with the budget and I recognize 11 it may be limited, have you consulted 12 historic budgets to use as information for 13 doing the current budget? 14 MR. HANNAH: Objection to form. 15 A. I wasn't involved in the 16 preparation of 2007 budget. What I would say 17 that usually you compare to last year 18 performance so I believe that was done in 19 order to prepare the 2007 budget. What was 20 actually done I'm not familiar with. 21 Q. Okay. In any capacity since you've 22 been at Finjan, have you had any reason to 23 look at historic budgets for Finjan? 24 A. I would like you to define what is 25 "historic."</p>	<p>159</p> <p>2 Q. Sure. I'm particularly interested 3 in whether you know whether there were 4 budgets for years 2003, 2004 or 2005? 5 A. I don't know. 6 Q. Don't know. 7 (Exhibit 1049, document, marked for 8 identification, as of this date.) 9 Q. Mr. Sofer, Exhibit 1049 is entitled 10 "Finjan management matrix 1997 consolidated," 11 it's numbered FIN 1613. 12 Have you ever seen a document in 13 this form before? 14 A. Again, I would like you to rephrase 15 the question. 16 Q. Sure. Let me ask a more general 17 question. 18 Have you ever seen this document 19 before -- 20 A. No. 21 Q. -- Exhibit 1049? 22 A. This is ten years ago. 23 Q. Have you seen more recent documents 24 that use this same format at Finjan? 25 A. This is an Excel sheet, looks like</p>

Pages 158 to 161

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 a format from an Excel sheet, and I am 3 looking at this format, I would say that 4 already line items that might not be exactly 5 the same in the format we used to, for 6 example, there's your column which H/C I 7 believe it refers to head count, which I'm 8 not familiar with such exact format. So if 9 you are asking exact format, no.</p> <p>10 Q. Do you use a management matrix at 11 Finjan today?</p> <p>12 A. What are you referring to as 13 "management matrix"?</p> <p>14 Q. Do you use a document entitled 15 "management matrix"?</p> <p>16 A. No.</p> <p>17 Q. Do you use a document that compares 18 by quarter projected actual and difference 19 for the line items shown here on 20 Exhibit 1049?</p> <p>21 A. Okay. So as I mentioned before 22 there are quarterly board presentations, and 23 we did, within this presentation there is the 24 actual to budget that is referring to the 25 current quarter.</p>	<p>2 Q. Do you currently use about these 3 same line items in that comparison, or are 4 they different?</p> <p>5 A. I think most of the line items are 6 there.</p> <p>7 Q. And if I wanted copies of the 8 document that the quarterly reports that 9 include this information, what documents 10 would I ask for?</p> <p>11 A. Okay. So again, what we were 12 relying on was the audited financial reports 13 which reflect, you know, the official reports 14 of Finjan. On a quarterly basis what you 15 would see is a quarterly report that compares 16 actual to budget, which are not the GAAP 17 revenues because we don't budget on GAAP 18 revenues, you would see compared to Finjan 19 bookings and previously as it was called 20 invoice revenues as what you gave me. I'm 21 not sure it would be exactly in the same 22 columns format, but there would be a report 23 on a quarterly basis of actual to budget.</p> <p>24 Q. What's the name of that report?</p> <p>25 A. I don't remember on top of my head,</p>
<p>2 but that's a part of Power Point 3 presentation, probably it's written Finjan 4 management report actual versus budget for 5 the quarter ending so and so.</p> <p>6 Q. Is that part of a packet that's 7 distributed to board members?</p> <p>8 A. Yes.</p> <p>9 Q. Is there a name for that packet 10 that's distributed to board members, is it 11 like the quarterly board materials or 12 something like that.</p> <p>13 A. Yes, I believe it's Finjan board 14 presentation for, yes.</p> <p>15 Q. Okay.</p> <p>16 A. Then you have here an example 17 Finjan board meeting and the relevant 18 quarter.</p> <p>19 Q. The sample you are referring to is 20 Exhibit 1048?</p> <p>21 A. Yeah. I'm not sure it's exactly 22 the same name, but the same idea.</p> <p>23 Q. When I ask Mr. Hannah for it I want 24 to make sure I ask for the right thing, 25 that's why I'm asking. So I'm going to tell</p>	<p>2 him to talk to you if he says he doesn't know 3 what it is.</p> <p>4 A. I think by now we know.</p> <p>5 Q. I apologize if I asked you this 6 before.</p> <p>7 Do you know if Finjan has ever had 8 a net profit in any year?</p> <p>9 MR. HANNAH: Objection to form.</p> <p>10 A. I don't know. Again, we could go 11 through these reports.</p> <p>12 Q. I'll spare you the trouble, I can 13 look through them, but if you wanted to find 14 out if Finjan had a net profit in any year 15 would you consult the audited financial 16 reports that we looked at today?</p> <p>17 A. I think these are the most reliable 18 source.</p> <p>19 Q. Okay. Would you also look to those 20 same audited financial reports for whether 21 Finjan has ever had a net operating profit?</p> <p>22 MR. HANNAH: Objection to form.</p> <p>23 A. Here I would like to understand 24 what you are referring to by "net operating 25 profit"?</p>

164

165

Pages 162 to 165

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 Q. If you look at -- for example, 3 which what year do you have in front of you, 4 2006?</p> <p>5 A. Yeah.</p> <p>6 Q. Yeah. Are you looking at the 2006 7 report --</p> <p>8 A. Yes.</p> <p>9 Q. -- Mr. Sofer, okay.</p> <p>10 So in the 2006 report on page four 11 there is a line item called "operating loss." 12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Is there a corresponding term 15 called "operating profit" if that number is 16 positive?</p> <p>17 MR. HANNAH: Objection to form.</p> <p>18 A. I believe it was a positive number 19 it would mention operating profit.</p> <p>20 Q. And so was it when I said net, was 21 that the part of my question that was 22 confusing?</p> <p>23 A. No. What I meant is that for 24 management purposes probably Finjan would be 25 viewed for operating calculation differently</p>	<p>2 than the GAAP revenues.</p> <p>3 Q. Okay.</p> <p>4 A. Again, as I told you, there are 5 revenues that Finjan receives, receives 6 payment for, but for GAAP purposes are 7 presented prorated over three years and that 8 skews the comparison. So I just want to 9 bring to your attention you need to be 10 careful when you are looking at the board 11 reports you will not be able to reconcile it 12 back to the audited report.</p> <p>13 Q. I understand.</p> <p>14 Generally is, it the case that your 15 revenues will be higher in any given year if 16 you are reporting on an invoice basis or is 17 that not correct?</p> <p>18 A. A correlation.</p> <p>19 MR. HANNAH: Objection to form.</p> <p>20 A. What I would say and I did not 21 really compare year to year, but if you are 22 on a growth slope where you have more orders 23 that are prorated over years you will be in a 24 situation where the management reports where 25 we provide booking or invoice sales would be</p>
<p>2 higher than the amounts that are on the 3 financial reports.</p> <p>4 Q. Right. So when you are evaluating 5 the financial health of Finjan, is there a 6 number or set of numbers you look at to 7 determine the financial health of the 8 company?</p> <p>9 MR. HANNAH: Objection to form.</p> <p>10 A. Again, what are you referring by 11 "financial health," because there are lines 12 of --</p> <p>13 Q. I'm trying to figure out when you 14 as CFO are looking at the numbers and trying 15 to decide are we accomplishing what we want 16 to accomplish here, are you more likely to 17 look at invoice revenue or are you more 18 likely to look at the prorated revenue?</p> <p>19 MR. HANNAH: Objection to form.</p> <p>20 A. Okay. So now you are going into a 21 whole debate. If we will open parenthesis, 22 when I came to the company there was or when 23 I looked at the reports so there was the GAAP 24 reports which actually reflect what is the 25 recurring monthly revenue or on a monthly</p>	<p>2 basis that is accumulated that Finjan 3 recognizes on subscription basis, and there 4 are the management report that shows the 5 total booking of the company. Now, if you 6 look at that there is a big question what is 7 more important, the booking revenues or the 8 ability of the company to generate revenues 9 on a steady basis ongoing. I was reading 10 some articles about it. And there's, at 11 least in my philosophy, if you look at the 12 company where you are able to see what is the 13 monthly recurring revenues that are generated 14 by the company it could reflect a much 15 healthier position of the company. With 16 Finjan because we budget on a booking level, 17 not on a monthly prorated we also get paid 18 usually up front for the total three years, 19 so the booking revenues are measured more as 20 a success of the company. I think that if 21 the company could show stability and growth 22 on a monthly basis of the install base and it 23 goes along and I could provide it, you know, 24 to show what is the growth that could be a 25 much more meaningful information and it</p>

167

169

Pages 166 to 169

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 prevents the fluctuations because when you 3 look at the quarterly basis it could be that 4 there was a purchase order that goes in a 5 certain quarter or pushed to another quarter, 6 and then you show a very bad quarter. 7 If you look at it on a prorated 8 basis, on a monthly basis you would see that 9 if a PO was pushed by a month it doesn't 10 change the situation -- was pushed from one 11 quarter to the other it wouldn't create that 12 fluctuation if you look at that on the GAAP 13 reports. So again, your question is it could 14 be both ways.</p> <p>15 Q. Depends, okay.</p> <p>16 So is it fair to say in general 17 that invoice numbers can show a larger number 18 at a point in time, but they are more subject 19 to dramatic fluctuations?</p> <p>20 MR. HANNAH: Objection to form.</p> <p>21 A. I agree with your statement, yes.</p> <p>22 Q. Is it also fair to say that 23 prorated numbers can give a picture over time 24 but it's harder to compare them to costs 25 because you can't prorate all your costs the</p>	<p>2 same way?</p> <p>3 MR. HANNAH: Objection to form.</p> <p>4 A. Again, if you are looking at the 5 revenues so you get some kind of smoothly, 6 now if you remember when we discussed the 7 2006 or it was the 2005 report you asked me 8 about the deferred costs, so we do defer the 9 cost. And you are right that since there are 10 salaries and limits that we do not provide so 11 the cost of sales line and all the other 12 costs are not prorated throughout, throughout 13 the total period, so the operational margins 14 are skewed to the other side, to the other 15 way around.</p> <p>16 Q. Right. Okay. So do you ever try 17 to perform a reconciliation where you say if 18 we could prorate all the costs or defer all 19 the costs here's what our financial picture 20 would look like?</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 A. So I would need you to ask the 23 question again.</p> <p>24 Q. Sure. What I'm wondering is, do 25 you ever try to, when you look at the</p>
<p>170</p> <p>2 smoothed out prorated revenue number, do you 3 ever try to do some calculation or adjustment 4 to prorate and smooth out all of the costs to 5 give you a basis to compare costs versus 6 revenue on a prorated basis, including 7 salaries and things like that?</p> <p>8 MR. HANNAH: Objection to form.</p> <p>9 A. I understand your question, we 10 didn't try to do that.</p> <p>11 Q. All right. Do you think that's a 12 calculation that could be done and would be 13 meaningful or do you think there are problems 14 that make it impossible to apply that method?</p> <p>15 MR. HANNAH: Objection to form.</p> <p>16 A. I will tell you for GAAP purposes 17 when we are looking at the GAAP revenues we 18 prorate the revenues to the dollar on a 19 monthly basis, and we accumulate it annually. 20 For GAAP purposes some of the costs are not 21 allowed to be spread once you incur them then 22 you really spent the money already although 23 the liability to the customer on a 24 subscription basis is still there. So I 25 think it would be not only it wouldn't be</p>	<p>171</p> <p>172</p> <p>2 meaningful it would be somehow misleading to 3 somebody to look at that because this cost 4 would not be recoverable in the future. So 5 if you say the profitability is higher then 6 that might cause some skewing in the 7 understanding of the number.</p> <p>8 Q. Mr. Sofer, do you, at Finjan, do 9 anything to track sales gains and losses to 10 competitors?</p> <p>11 MR. HANNAH: Objection to form.</p> <p>12 A. Again, I need you to repeat the 13 question.</p> <p>14 Q. Sure. Repeat it or clarify?</p> <p>15 A. To clarify.</p> <p>16 Q. So when you have a customer and the 17 customer decides to stop using Finjan 18 products, do you track that event, do you 19 track that event, do you keep track of 20 customers that you lose over time?</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 A. We have a system that is tracked 23 through the sales force. I don't know if you 24 are familiar with that. All the salespeople 25 really enter into sales force the pipeline</p>

171

173

Pages 170 to 173

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 and then they track the process of the sales. 3 When a sale is lost, so they enter into the 4 system that the sale was lost and what was 5 the reason.</p> <p>6 Q. Have you had a chance to look at 7 some of that sales force data?</p> <p>8 A. I am connected to sales force, it 9 means I have access to this information, I 10 don't do that on a day-to-day basis, but 11 these issues are, you know, through the 12 course of business, so when there is certain 13 case that I need to look at, of course, I'm 14 looking to the detail.</p> <p>15 Q. And have you had occasion to look 16 at sales force to try to determine for what 17 reasons Finjan has lost sales?</p> <p>18 MR. HANNAH: Objection to form.</p> <p>19 A. This is done by the entire 20 management or I would say regular meetings to 21 understand what happens, why do we lose, 22 where do we lose, etc.</p> <p>23 Q. Do you put that written analysis in 24 written form anywhere?</p> <p>25 MR. HANNAH: Objection to form.</p>	<p>2 A. I remember it was through 3 discussion, I didn't see analysis in a 4 written form. I don't know, it might exist 5 within the company.</p> <p>6 Q. A never used salesforce.com. 7 Can you describe for me what the 8 interface looks like when you use it?</p> <p>9 MR. HANNAH: Objection, objection 10 to form.</p> <p>11 A. Sales force is really a tool for 12 managing sales. It enables every salesperson 13 once there is an opportunity or, you know, 14 they start a process with the customer to 15 open an opportunity within the system to put 16 in the customer details, to put in what they 17 believe is the potential revenues and then 18 document the process within that sales cycle.</p> <p>19 Q. Okay. And when you, as a manager, 20 go and look at salesforce.com, what do you 21 see when you look at the screen?</p> <p>22 MR. HANNAH: Objection to form.</p> <p>23 A. It varies really, so depends what I 24 want to see.</p> <p>25 Q. Okay. Is there an initial screen</p>
<p>2 that you always see when you first go to 3 salesforce.com?</p> <p>4 A. It's the screen changes from one 5 person to another, so you could really modify 6 the screen to --</p> <p>7 Q. I see. So do you have a screen 8 that you use when you first go to 9 salesforce.com?</p> <p>10 MR. HANNAH: Objection to form.</p> <p>11 A. Yeah, I'm not a user -- I mean, I'm 12 not a sales guy that is using the sales 13 force. But as a manager in the company I 14 have access to the sales force, so usually 15 what I do is I enter the screen which has the 16 global information for the entire company, 17 and then I could scroll down and look at 18 specific opportunities or anything that I 19 want to see.</p> <p>20 Q. Okay. Is that screen organized 21 like a grid or spreadsheet or how is it 22 organized?</p> <p>23 A. I define it as --</p> <p>24 MR. HANNAH: Objection to form.</p> <p>25 Thanks.</p>	<p>2 A. So you, you know, if I'm looking at 3 what, you know, entering the screen so it 4 has, you know, you need to put in password, 5 I'm using the finance password and then you 6 get into a screen where it defines reports or 7 you could enter as a salesperson, etc. I 8 usually go to the screen of the reports and 9 there you could see it's something similar to 10 an Excel format.</p> <p>11 Q. Okay. Is there a report you can 12 ask for which is a report of all of the 13 Finjan information on all of salesforce.com?</p> <p>14 MR. HANNAH: Objection to form.</p> <p>15 A. I don't know. I believe it's 16 possible.</p> <p>17 Q. Is there a report you find useful 18 for your purposes typically that you ask for?</p> <p>19 MR. HANNAH: Objection to form.</p> <p>20 A. Yes.</p> <p>21 Q. What is that?</p> <p>22 A. Usually I look at a quarterly 23 funnel report.</p> <p>24 Q. Quarterly what report?</p> <p>25 A. The funnel report.</p>

Pages 174 to 177

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 Q. Funnel? 3 A. Yeah. 4 Q. Okay. And the funnel is the funnel 5 of business from initial contact to 6 conversion? 7 MR. HANNAH: Objection to form. 8 A. When I look at report there are 9 definitions of the stages of the sale. 10 Q. Is "funnel" a term on 11 salesforce.com or are you using a more 12 business term for funnel? 13 A. It's the general business term. 14 Q. In your experience have the 15 salespeople been good about entering 16 information so you can get good current 17 information when you look at salesforce.com? 18 MR. HANNAH: Objection to form. 19 A. When you say the "salespeople," 20 what are you referring to? 21 Q. Let me make sure I understand. 22 Who is it at Finjan who enters 23 information into salesforce.com? 24 A. Okay. The access to salesforce.com 25 is granted to all the salespeople in Finjan,</p>	<p>2 there are some that are more, I would say 3 accurate in entering the information on a 4 daily basis, and there are some that need to 5 be pushed to put the information in. 6 Q. They are human? 7 A. Yeah. 8 Q. I'm not shocked by what I'm 9 hearing. All right. 10 Can you make any generalization 11 about the U.S. sales force, are they better 12 or worse than outside the U.S. about keeping 13 the information current in salesforce.com? 14 MR. HANNAH: Objection to form. 15 A. When you look at the U.S. sales 16 form — sales force you know there is a lot 17 of people that are coming in and leaving so I 18 don't really know what is the current 19 situation. 20 Q. Okay. Other than what you've just 21 told me about salesforce.com and management 22 discussions, is there any way that Finjan 23 tries to analyze the reasons that it has lost 24 or gained a particular sale? 25 MR. HANNAH: Objection to form.</p>
<p>178</p> <p>2 A. So I need you to repeat the 3 question. 4 Q. Yeah. You told me about 5 salesforce.com just now? 6 A. Yes. 7 Q. And you told me about some 8 management discussions. 9 Are there any other ways you try at 10 Finjan to determine when you lose a sale or 11 when you gain a sale why it was that you lost 12 or gained that sale? 13 MR. HANNAH: Objection to form. 14 A. So other than what I said I'm not 15 familiar with other ways. 16 Q. Do you know if Finjan has lost any 17 deals specifically to Secure Computing? 18 MR. HANNAH: Objection to form. 19 A. When you ask "any deals," what are 20 you referring, which period? 21 Q. I want to ask the broadest question 22 first. 23 Are you aware of any deal where 24 Finjan and Secure Computing were competing 25 for the deal and Secure Computing got the</p>	<p>179</p> <p>2 deal? 3 MR. HANNAH: Objection to form. 4 A. I don't remember specific deals, 5 but I know that there were situations where we 6 were competing with each other. 7 Q. Can you identify those situations 8 in any way, by the customer or otherwise? 9 MR. HANNAH: Objection to form. 10 A. I don't recall this information 11 because I'm not involved in the analysis of 12 that, but I believe that when 13 Secure Computing and Finjan or Finjan with 14 any other competitor are competing, the 15 salespeople enter who is the competitor. We 16 don't always know who is the competitor so 17 it's limited to, you know, the best of our 18 knowledge. 19 Q. What other competitors are you 20 aware of who have competed with Finjan for 21 sales other than Secure Computing? 22 MR. HANNAH: Objection to form. 23 A. I'm not really involved in that 24 process. What I'm hearing, you know, in 25 meetings, etc., I heard of Blue Coat, I heard</p>

180

181

Pages 178 to 181

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 of Secure Computing, I think there were a few 3 others, but I don't recall the other names, 4 but I think Blue Coat was the major other one 5 that I recall that was mentioned.</p> <p>6 Q. Okay. Is it, is it part of your 7 job at Finjan at all to look at analyst 8 reports like IDC or Gartner?</p> <p>9 A. No.</p> <p>10 Q. Does anyone report to you who is 11 not in the financial group?</p> <p>12 A. So again, we need to define what is 13 the "financial group."</p> <p>14 Q. It's a circular question.</p> <p>15 Does anyone report to you who has a 16 sales role?</p> <p>17 A. No.</p> <p>18 Q. Does anyone report to you who has a 19 business development role?</p> <p>20 A. No.</p> <p>21 Q. Does anyone report to you who has a 22 research and development role?</p> <p>23 A. No.</p> <p>24 MR. HOLDREITH: It's about ten 25 after three, I'm going to get organized,</p>	<p>2 I will get you out of here by 3:30 3 today. Just give me five minutes to 4 figure out what questions I have. We'll 5 take a break.</p> <p>6 MR. VIDEOGRAPHER: 3:11. Off the 7 record.</p> <p>8 (Recess taken.)</p> <p>9 MR. VIDEOGRAPHER: 3:20. On the 10 record.</p> <p>11 Q. Mr. Sofer, are you aware of a 12 person named Mashe, M-A-S-H-E, Rubin?</p> <p>13 A. Again, I need you to say it again.</p> <p>14 Q. The name is Mashe. It's -- I'm not 15 sure how to pronounce it. The first name is 16 spelled M-A-S-H-E, and the last name is 17 Rubin, R-U-B-I-N?</p> <p>18 A. No, it's the first time I hear the 19 name.</p> <p>20 Q. All right. I'm going to be asking 21 Mr. Hannah for some documents and so I just 22 want to understand what documents exist at 23 Finjan. I'm going to be a little bit 24 repetitive here now.</p> <p>25 Does Finjan have documents that</p>
<p>2 establish the day it first sold the product?</p> <p>3 MR. HANNAH: Objection to form.</p> <p>4 A. I don't know. It will require 5 going to archive, you are speaking of ten 6 years ago.</p> <p>7 Q. Who would you ask to try to find 8 that document?</p> <p>9 A. I think it will be the people that 10 report to me, the financial folks because you 11 are speaking of revenues that were generated 12 by Finjan.</p> <p>13 Q. Do you know if you save records of 14 invoices going back ten years at Finjan?</p> <p>15 A. I don't know.</p> <p>16 Q. Does Finjan have information that 17 would show the invoice sales of appliances 18 separate from subscriptions by month?</p> <p>19 MR. HANNAH: Objection to form.</p> <p>20 A. I will need to understand the 21 question again.</p> <p>22 Q. Sure. Could you find data that 23 would show for each month the invoice sales 24 of appliances?</p> <p>25 MR. HANNAH: Objection to form.</p>	<p>2 A. Again, the invoice sales is 3 information that is in the accounting system. 4 The breakdown what two line items it depend 5 because you are speaking here for a very 6 broad period, so you need to look at it.</p> <p>7 Q. At least for some period does 8 information exist that shows invoice sales of 9 appliances separate from subscriptions by 10 month?</p> <p>11 MR. HANNAH: Objection to form.</p> <p>12 A. So when you say "separate from 13 subscriptions," what do you mean?</p> <p>14 Q. Can you, can you find out what the 15 prices that was invoiced for the appliance 16 separately that was invoiced for the 17 subscription?</p> <p>18 MR. HANNAH: Objection to form.</p> <p>19 A. So we don't have a line item that 20 is called "subscription."</p> <p>21 So what are you referring to?</p> <p>22 Q. That may be the answer to my 23 question. What I'm wondering is if you 24 anywhere separately allocate some portion of 25 the revenue to the appliance and some portion</p>

183

185

Pages 182 to 185

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 of the revenue to the subscription? 3 A. Okay. So there is the books and 4 the software, so this is a detail in the 5 accounting system, I don't know if it could 6 be retrieved because for management purposes 7 we are not issuing these reports so that 8 might require a lot of work. 9 Q. Okay. At the time of the sale is 10 there a line on the invoice for the appliance 11 separate from the line item for the 12 subscription? 13 MR. HANNAH: Objection to form. 14 A. Yes. 15 Q. And do you keep copies of invoices? 16 A. The invoices are kept as part of 17 the accounting system. 18 Q. And are they kept in an aggregated 19 form in a spreadsheet somewhere? 20 MR. HANNAH: Objection to form. 21 A. I don't know. 22 Q. Do the invoices at the time of sale 23 include a separate line item for maintenance 24 if the customers purchase maintenance? 25 A. I have to think. If we are looking </p>	<p>2 at a typical invoice it would include, it 3 would be included in a separate line item. 4 It could be that in some cases we would 5 prefer to aggregate all of that just to put 6 it in one line item, so we would not be able 7 to separate in that case. 8 Q. Do you have in your files budgets 9 for any years from 2000 to present? 10 MR. HANNAH: Objection to form. 11 A. Again, when you are looking at 12 that, what are you referring to budgets? 13 Q. Any budgets. 14 MR. HANNAH: Objection to form. 15 A. The answer is that for 2007 we have 16 the budgets going back, we will need to 17 check. 18 Q. All right. Do you have a breakdown 19 of the line items that make up R and D 20 expenses by year? 21 MR. HANNAH: Objection to form. 22 A. Again, what are you referring to by 23 "breakdown"?</p>
<p>186</p> <p>2 MR. HANNAH: Objection to form. 3 A. So you are asking me before 4 regarding the breakdown of line items, 5 believe to the extent of, you know, the main 6 items there should be the breakdown. If you 7 are referring to historical amounts, I'm not 8 sure we are archiving the whole information 9 going back ten years. So I could only 10 testify on, you know, what I know which is 11 2007 there is the breakdown. 12 Q. There may be a breakdown for before 13 2007, but you don't know? 14 A. Yes. 15 Q. Is there a breakdown of line items 16 that make up selling and marketing expense 17 for 2007? 18 A. Yes. 19 Q. And do you know whether there's a 20 breakdown of line items that make up selling 21 and marketing expense prior to 2007? 22 MR. HANNAH: Objection to form. 23 A. I don't know. 24 Q. Is it possible? 25 A. Yes. </p>	<p>187</p> <p>2 Q. Same answer for general and 3 administrative expense? 4 A. Yes. 5 Q. Have you seen any documents today 6 that break down any of the expenses? 7 MR. HANNAH: Objection to form. 8 A. To the extent of breakdown for 2007 9 quarterly report since I was present so we 10 have these breakdown because this is part of 11 the quarterly financial report. Prior to 12 that I have no idea. 13 Q. Today, here at the deposition, have 14 you seen any documents that break down 15 expenses? 16 MR. HANNAH: Objection to form. 17 A. We have the financial reports which 18 shows the expenses and we can look in the 19 note, there isn't a full breakdown but you 20 have some referred to what some of the 21 expenses comprised of, so it's not a full 22 breakdown. 23 Q. Other than what's in those notes 24 have you seen any breakdown of expenses at 25 the deposition today? 189 </p>

Pages 186 to 189

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

<p>2 MR. HANNAH: Objection to form. 3 A. You mean documents that were 4 presented to me? 5 Q. Right. 6 A. I don't remember. A lot of 7 documents were presented. In the financial 8 statements there is some extent the 9 breakdown. 1997 it's not a breakdown but 10 it's high level. The board meeting 11 presentation you gave me for Q-4 1994 I 12 didn't go through it, so I want to go through 13 it right now.</p>	<p>2 The others I don't know, I didn't see budget 3 but probably if the board meeting 4 presentation, again, there is some referral 5 to -- I don't see the word "budget" here. 6 Q. And the board meeting presentation 7 is the 1997 presentation -- 8 A. Yeah. 9 Q. -- Exhibit 1048? 10 A. There was the word "forecast" 11 maybe, maybe ten years ago they called it 12 "forecast." 13 (Jurat contained on next page.)</p>
<p>14 Q. I think I can go through it and 15 verify for myself. I don't see any breakdown 16 there. 17 A. The other documents there weren't 18 any. 19 Q. Have you seen any budgets at the 20 deposition today? 21 A. The financial statements do not, of 22 course, include budgets. Here you presented 23 to me a 1997 consolidated projection versus 24 actual, I don't know if that means budget. 25 So that's the only budget that you showed me.</p>	<p>14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>190</p>	<p>191</p>
<p>2 MR. HOLDREITH: All right. Subject 3 to the objections I've made on the 4 record today about information that we'd 5 like and don't think we have, I'm 6 finished with my questions for you 7 today. I appreciate your time, 8 Mr. Sofer. 9 A. Thank you. 10 MR. VIDEOGRAPHER: Here marks the 11 end of the deposition of Mr. Sofer. The 12 time is 3:29 p.m., end of tape two. 13 14 -000- 15 (Whereupon, the deposition of EZRA 16 SOFER was concluded at 3:29 p.m.)</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>19 20 21 22 23 24 25</p> <p>EZRA SOFER Subscribed and sworn to before me this ____ day of _____, 2007.</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>C E R T I F I C A T E STATE OF NEW YORK) : ss. COUNTY OF NEW YORK) I, Toni Allegrucci, a Notary Public within and for the State of New York, do hereby certify: That EZRA SOFER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter. IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of October, 2007.</p> <p>TONI ALLEGRECCI</p>

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

INDEX			EXHIBITS		
WITNESS	EXAMINATION BY	PAGE	EXHIBIT	DESCRIPTION	FOR ID.
EZRA SOFER	MR. HOLDREITH	5	4	Exhibit 1045	Document 132
-----	-----	-----	5	Exhibit 1046	Document 146
-----	-----	-----	6	Exhibit 1047	Document 148
DIRECTIONS:			7	Exhibit 1048	Document 150
RULINGS:			8	Exhibit 1049	Document 161
TO BE FURNISHED:			9		
REQUESTS:			10		
MOTIONS:			11		
-----	-----	-----	12		
EXHIBIT	DESCRIPTION	FOR ID.	13		
13 Exhibit 1034	Document 102		14		
14 Exhibit 1035	Document 110		15		
15 Exhibit 1036	Document 110		16		
16 Exhibit 1037	Document 110		17		
17 Exhibit 1038	Document 110		18		
18 Exhibit 1039	Document 110		19		
19 Exhibit 1040	Document 110		20		
20 Exhibit 1041	Document 110		21		
21 Exhibit 1042	Document 110		22		
22 Exhibit 1043	Document 123		23		
23 Exhibit 1044	Document 136		24		
24			25		
25					195
		194			

Pages 194 to 195

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

Page 1

<p>A</p> <p>abbreviation 117:10 ability 27:14 169:8 able 21:3 47:2 84:8,9 121:9 125:10 146:9 146:11 148:6 159:2 167:11 169:12 187:6 abovementioned 100:9,19 accept 126:15 access 23:20,24 40:13 174:9 176:14 178:24 accessible 42:9 accommodate 6:15 accomplish 168:16 accomplishing 168:15 account 69:19 76:7 accounting 12:8 14:24 19:16 20:7,11,16,19 21:22,24 22:9,14,18 23:6,9,14,20,25 34:25 35:11,12,14 35:18 36:16,17 37:8 70:11 75:11 92:17 104:15,18 106:17,22 106:24 107:3 148:7 156:20 185:3 186:5 186:17 accrual 62:19 accrue 62:24 accumulate 172:19 accumulated 65:11,14 65:20,23,25 66:2 169:2 accumulative 66:5 accuracy 129:2 accurate 40:15 46:13 57:7 103:2,4 119:6,9 135:11 179:3 accused 101:21 acquire 59:14 action 1:4 193:17 active 18:23 19:2,9 activities 47:19 76:11 78:23 actual 62:17 70:6 154:8,9 162:18,24 163:16,23 164:4 190:24 add 58:11 adding 74:2 addition 11:11,16 additional 66:20 adequate 158:10 adjust 115:21</p>	<p>adjustment 172:3 admin 12:9 administrative 72:21 73:2 75:3,15,21 76:3 76:9,17,23 189:3 ag 1:10 aggregate 57:24 118:24 187:5 aggregated 75:4 186:18 187:25 ago 13:25 152:9 155:15 161:22 184:6 191:11 agree 85:3,8 108:8 124:13 170:21 agreement 49:16 64:11 66:24 93:3,8 94:15 agreements 47:6 145:8 145:12,23 156:21 ahead 5:20 6:14 20:9 21:10 23:18 34:22 38:11 44:13 47:11 82:9 101:6 109:10 116:22 127:3,10 153:3 allegation 99:24 alleging 99:21 allegrencci 1:24 2:11 193:7,24 allocate 137:16,20,22 138:3 185:24 allowed 172:21 amdocs 7:3,6,7,7,8,9 7:11 8:3 america 7:4 amount 47:2 49:10 69:24 80:15 84:18 84:24 90:13 92:8 120:17,22 122:15 131:3 137:12 amounts 33:23 115:21 119:13 120:13 131:10 168:2 188:7 analysis 156:9 174:23 175:3 181:11 analyst 182:7 analyze 179:23 annual 49:20 83:7 115:6 annually 130:23 172:19 answer 5:21 6:2,4,6,16 16:8 34:2 41:17,19 44:10,11 47:20 88:8 101:5,6 109:9,10</p>	<p>110:10 118:15 119:23 122:25 124:11 125:3,6 130:6 139:7 185:22 187:15 189:2 answered 44:12 159:22 answering 58:14 anticipate 5:19 antivirus 68:7 71:17 91:9 anybody 21:16,17 90:23 anymore 72:25 74:20 apart 90:4 apologize 61:5 144:11 165:5 appear 127:8,13 appearing 126:19 appears 32:3 63:16 appliance 28:19 31:6 31:18,20 32:2,4,7,20 49:6,7 121:2,15 132:13 135:17 137:24 138:21 150:7 185:15,25 186:10 appliances 28:2,2 30:4 30:5,10,14,17,19 31:2,12 32:10 58:24 59:2,14 67:13 68:7 68:22,24 69:4,10 70:16,22,25 71:2,7,9 71:12 97:7,18,20 98:6,20 117:16 118:25 120:18,23 121:10,24 131:21 132:2 137:22 138:13 184:17,24 185:9 apply 172:14 appoint 123:12 appointed 123:22 124:2 appreciate 5:25 112:17 159:13 192:7 approached 7:18 archive 27:6 155:6 184:5 archived 44:18 156:18 archives 136:23 archiving 44:22 188:8 area 8:6 arp 28:24 arrival 33:5,20 articles 169:10 asher 7:16</p>	<p>asked 14:14 39:18 40:4 62:14 101:7 120:6 123:14 138:2 146:7 165:5 171:7 asking 29:23 38:5 41:17 43:25 44:11 44:14,22 55:11 58:12 60:3 75:25 91:16 97:25 101:10 106:13 121:8 122:6 134:23 142:24 148:23 162:9 164:25 183:20 188:3 assets 58:6,19 assigned 143:20 assistant 11:22 14:21 14:21 assume 136:14 attachment 137:5 attention 167:9 attorney 5:13 attorcyclent 41:13 101:4 109:8 123:2 attorneys 1:16 2:6 3:5 3:11 21:7 54:14 109:24 attributable 66:23 attributes 110:12 audit 16:12 17:8 103:9 129:6,20 130:14,18 130:22 audited 16:24 17:5 100:23 111:13,20 112:4,25 113:9 114:3 115:13 122:4 125:17 130:8,10,13 136:9 163:12 165:15 165:20 167:12 auditing 16:6,15 auditors 16:12 76:7 103:9 128:25 129:11 130:14,18,22 142:5 available 32:5 39:2 40:22 84:4 157:11 avenue 3:13 aware 15:7,10 22:12 24:6 28:7 33:2 46:24 47:5 90:14,20 99:3 99:24 103:5,8 109:20 123:21,25 125:8 180:23 181:20 183:11</p> <p>B</p> <p>believe 17:3,9 27:8 28:15 33:22 41:17 44:10 45:12 55:24 62:16,24 70:10 72:17 74:6 88:10 92:19 100:8,18 101:22 102:25 104:11 108:2,23 136:22 138:5 139:7 139:25 142:5 147:23 149:14 155:5 157:15 158:8,25 160:18 162:7 164:13 166:18 175:17 177:15 181:12 188:5 believes 109:25 110:5</p>
---	---	---	---

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

Page 2

benchmark 18:4,9	brin 12:21,23 13:13,15	109:7	cisco 18:5,14,19 145:8	company 7:5,9,20,23
benitzhaks 54:5	bring 167:9	cancelling 150:11	145:11,13,16,24	11:6 12:11 14:4,5
bessimer 18:16	broad 152:7 185:6	cant 6:21 15:16 23:3	city 8:9,14 18:12	15:4,5,8,11,16,17
best 104:20 111:16,23	broadcast 135:21	133:25 146:20	civil 1:4	16:21 17:2,3 18:3
112:7 113:4,12,19	180:21	170:25	claim 99:17 102:2,3	19:21 21:10 22:16
114:2 122:14 131:2	brochure 78:24	capacity 11:21 73:17	108:2,4,11,17,23	22:25 23:3 24:23
131:9 144:10 181:17	broken 50:13 72:7	74:15 160:21	109:14 110:5,5	28:16,23 30:15,20
better 26:10 179:11	75:22 116:18 118:4	capital 18:20	clarification 91:16	30:23 32:19,24 33:6
big 44:16 98:13 169:6	118:6	care 122:6 141:17	clarify 34:9 57:18	33:16,20 34:3,7 35:4
bigger 86:9 138:22	budget 82:23 83:2,4	careful 102:11 167:10	173:14,15	40:18 43:2 44:24,25
bill 159:19	83:12,18 84:10,16	case 21:13 40:3 41:5	clarifying 62:22	45:11 50:15,21
billing 7:10,13	84:23 86:8,12 87:3,6	42:19 52:19 77:20	clear 6:7 35:15 51:2	52:16 55:4,6,9,16,17
bit 183:23	87:7,9 88:3,5,9	93:12 96:16 101:20	91:12	55:18,20,22 56:8,13
blood 193:17	154:8,9,10,13,16,23	104:15 117:11 134:2	client 124:10	56:19 57:3,9 62:2,14
blue 181:25 182:4	155:3 160:3,5,10,13	167:14 174:13 187:7	close 84:10	64:16 66:2,6 74:16
board 12:24 14:7	160:16,19 162:24	cases 98:16,18 187:4	closed 96:12	76:12 85:23 86:6
150:17,24 151:8,14	163:16,17,23 164:4	cash 32:24 62:20	closer 144:15	90:16,20,22 93:21
151:16,22,25 152:8	169:16 190:24,25	64:18,19,23 94:18	coat 181:25 182:4	94:4,8,11,14,19 95:8
152:13,23 153:4,5,8	191:2,5	categories 71:24 72:8	code 105:15,20,23	95:20 96:16 97:7,12
153:9 154:3,6 155:7	budgeted 84:17 86:11	74:22 153:21	106:11 107:2 144:19	97:17,18 98:24
155:17,18,23 156:2	budgeting 83:7,9	cause 173:6	coie 3:4 4:22	99:20 100:7,16,17
156:17 160:5 162:22	159:25	caution 101:3 124:25	collected 158:9	100:22,24 101:7,13
164:7,10,11,13,17	budgets 82:17,19	cautionary 125:14	column 116:14 118:12	104:23 107:15 108:2
167:10 190:10 191:3	83:21,23 87:22	caveat 89:15 128:23	134:7 147:9 162:6	108:22 109:23
191:6	146:9 156:18 160:12	center 105:16,20,24	columns 163:22	120:24 125:18 129:2
boards 10:17	160:23 161:4 187:8	106:11 157:7	com 175:6,20 176:3,9	130:20 136:4 138:7
bold 134:7	187:12,13,16 190:19	ceo 7:17 88:7 156:11	177:13 178:11,17,23	139:10 141:20
book 48:4,9	190:22	certain 76:2 115:17	178:24 179:13,21	143:22 144:12
booking 167:25 169:5	building 8:13,14,17	120:9 170:5 174:12	180:5	152:11 153:6,14
169:7,16,19	9:5,5,8,14,15	certainly 156:17	combination 104:4	155:11 156:8 168:8
bookings 87:8 163:19	business 7:8 16:20	157:16 159:10	come 7:14 32:23	168:22 169:5,8,12
books 20:2 119:12,15	34:4 39:25 41:2	certify 193:9,15	122:22	169:14,15,20,21
186:3	62:13 149:22 157:7	cfo 6:21 11:3,9,10 65:2	comes 32:18 37:9	175:5 176:13,16
bottom 54:13 65:10,10	174:12 178:5,12,13	100:15 101:9,10	comment 155:13	companys 94:24 95:11
93:2 95:9,11 99:16	182:19	168:14	commercial 47:4	95:16 97:5 122:23
box 138:22,25 139:2	buy 34:17 138:12	chance 104:21 148:16	commission 79:3 80:9	compare 155:2 160:17
140:20 141:7 142:11	 C	158:19 174:6	81:3	167:21 170:24 172:5
142:15	calculated 37:7 61:23	change 73:11,14 81:3	commissions 78:15	compared 163:18
boxes 138:18,25 139:6	70:12 140:2	129:5,15,21 170:10	79:9,13,15,24 80:3	compares 162:17
139:16	calculation 36:20	changed 34:4 130:2	80:13,16,22 81:7,13	163:15
break 6:12,13,17,18	37:16,18,20,22,25	changes 10:3 47:5	81:20,22	comparison 154:10,12
25:15 38:25 39:7,17	38:4,7 70:10 166:25	81:5 144:20 153:24	chief 17:8	154:15 163:3 167:8
76:15,21 77:5 79:23	172:3,12	176:4	communicate 124:10	comparisons 154:23
82:8,10 92:8 110:15	calendar 50:7	charged 142:6	communication 41:14	competed 181:20
124:9,14 144:23	california 3:7	charges 139:25	101:4 109:8 123:2	competing 180:24
157:20 158:6,12	call 91:19	charging 142:24	communications	181:6,14
183:5 189:6,14	called 5:5 15:4,5 54:6	chart 116:4	125:4,5	competitor 181:14,15
breakdown 30:21	55:4,20 92:9 105:23	check 187:17	181:16	181:16
75:16,17,18 77:2,3	132:14 149:6,10	chief 11:3	competitors 173:10	181:19
87:15,20 106:17	163:19 166:11,15	chosen 16:23	complication 144:18	components 68:18
117:23 185:4 187:18	185:20 191:11	chrysler 8:13,14,17	comprehensive 33:15	35:7
187:23 188:4,6,11	calling 44:7 122:24	9:5,8,14,15	compressed 118:3	
188:12,15,20 189:8	124:25	circular 182:14		
189:10,19,22,24	calls 41:13 101:4	circulates 114:23		
190:9,9,15		ciresi 3:10 4:25		

Esquire Deposition Services
1-800-944-9454

Ezra Sofer
HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY

Page 3

comprised 189:21	convince 14:9	counsel 4:18 21:12 38:20 40:4,7,17 41:14,17 42:20 44:8 83:20 112:16 145:20 146:14 156:12 158:18	cyberguard 1:10 cycle 175:18	176:23 182:12 defined 48:12 50:5 91:10
D				
computing 1:9 4:5 5:14 180:17,24,25 181:13,21 182:2	copy 27:3,6,11 42:11 44:18,19 45:15,22 54:5,16 84:22 102:5 102:8,9,14,21 111:13,20,24 112:4 112:8,10,20,25 113:5,9,13,17,20,24 114:5 123:10 132:18 137:4 150:16 151:24 152:8	count 162:7 counterclaimants 1:12 3:11 counterdefendant 1:6 3:5 county 193:5 course 38:21 39:24 41:2 62:13 85:21 139:8 149:21 152:9 152:10,14 158:7 174:12,13 190:22 court 1:2 4:6 5:3,16 21:13 cover 157:22 covered 131:22 132:3 covering 67:12 create 45:12 170:11 created 60:24 credit 149:6,10,14,14 149:15,18,20 150:2 150:5,9,10 currency 95:7 current 40:5 41:15 44:9 58:6,19 62:7,12 63:5 72:24 73:25 74:9 88:7 123:17 124:3 125:11,24 156:18 160:13 162:25 178:16 179:13,18 currently 10:9 11:2 12:14,18 22:3 27:22 39:19 62:3 67:25 90:17 99:2,3 163:2 customer 9:20 46:15 46:20 47:15,17 63:13 64:5,14 71:16 97:18 98:2,5,7,13,19 98:21 143:20 144:3 144:6 150:6,12 172:23 173:16,17 175:14,16 181:8 customers 11:17 31:11 31:17 52:9 65:4 78:25 96:17,23,25 142:19,25 143:4 144:15 173:20 186:24 cutoff 86:21	daily 179:4 data 19:18 21:21,23 23:7,14,21 24:2 26:4 28:18 29:13,15 30:7 35:4,6,9,10,12 44:24 153:21 156:19,19 157:4,21 174:7 184:22 database 21:4 date 4:7 102:13 111:2 123:9,19 124:5 126:3 132:17 134:21 135:6,9 136:16,19 137:2 146:23 148:20 150:15 155:4,7 161:8 day 9:10,11 184:2 192:22 193:21 daytoday 174:10 deal 33:7 34:24 180:23 180:25 181:2 deals 96:21 180:17,19 181:4 debate 168:21 december 36:7 50:10 54:8 58:7 59:10 61:17 102:23 104:23 105:7 111:12,19 112:3,23 113:8,16 113:23 decide 43:12 45:9 168:15 decided 68:22 144:5 decides 173:17 decision 43:8 decreasing 85:10 dedesignate 21:11 defendant 3:11 defendants 1:12 5:2 defer 70:19 171:8,18 deferred 63:6,10,16 64:15 69:14,20,20 69:24 70:5,14 171:8 defers 65:7 deficit 65:11,14,20,23 65:25 define 19:24 31:15 33:12 61:14 69:3 80:9 86:13 90:7 103:4 119:8,16 122:18 126:4 160:24	depart 14:13 depend 185:4 depending 43:7 68:23 110:13 128:8 depends 26:23 86:20 98:10 170:15 175:23 deposition 1:17 2:7 4:3 4:8,15 38:22 54:5 102:16 137:11 146:16 156:25 157:3 157:5 189:13,25 190:20 192:11,15 193:11,13 depositions 156:16 158:24 deposits 32:25 derivative 154:17 derived 38:14,15 104:3,7 derives 107:2 describe 48:7 175:7 described 35:2 47:19 61:20 describes 59:19 94:3 description 48:4 54:23 134:4 194:12 195:3 designate 21:6 159:7 designated 21:14 122:21 148:17 designation 131:16 destroyed 41:10,25 detail 74:21 75:20 87:11 156:20 174:14 186:4 detailed 86:8 87:9

Esquire Deposition Services
1-800-944-9454